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5 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
6 **OF THE STATE OF CALIFORNIA**
7

8 In the Matter of the Application of:

9 **Rodney Cotton**

Precedent Decision No. 01 – 04

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11 A hearing on this application was held on June 6, 2001, in Riverside, California, by
12 Judith A. Kopec, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
13 Victim Compensation and Government Claims Board (Board).

14 The applicant, Rodney Cotton, attended the hearing.

15 The hearing record remained open until June 15, 2001, so that Mr. Cotton could submit
16 additional witness statements. Mr. Cotton did not submit any additional documents and the record was
17 closed on June 15, 2001.

18 **Claim History**

19 The application was received on August 28, 2000, was recommended for denial on the
20 December 1, 2000, consent calendar, and was appealed. The application requested medical/dental and
21 rehabilitation losses. A completed medical verification treatment form indicated that Mr. Cotton
22 received medical services on August 10, 2000, totaling \$362.65 from Kaiser Permanente. Mr. Cotton
23 also submitted evidence that he paid \$145.00 to recover his car after it was impounded as evidence.

24 **Summary of Issues**

25 Staff recommended the application be denied because staff determined that Mr. Cotton
26 failed to cooperate with the law enforcement agency that investigated the qualifying crime.
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Findings of Fact

On August 10, 2000, Mr. Cotton was driving to his former girlfriend's home. As he turned left, a man jumped out from behind two parked cars. He stopped the car to avoid hitting the man. The man turned and pointed a gun at Mr. Cotton. Mr. Cotton bent over to avoid being shot and hit the gas. He heard a pop and realized he was shot in the arm. Mr. Cotton drove to his former girlfriend's home. He parked the car across the street and a friend took him to the hospital.

At the hospital, Mr. Cotton was interviewed by Officer Gerard of the Rialto Police Department. Mr. Cotton answered Officer Gerard's questions before he received any medical treatment. At one point, a nurse wanted to take Mr. Cotton for x-rays, but Officer Gerard insisted on asking Mr. Cotton additional questions. Mr. Cotton became upset; he was in pain and believed that Officer Gerard was interfering with his receiving medical treatment. He testified that Officer Gerard said that she didn't care if he was bleeding to death, he had to answer her questions. Officer Gerard would not permit Mr. Cotton to receive pain medication while she was talking with him.

Mr. Cotton testified that Officer Gerard repeatedly asked him the same questions. He told her what happened and gave her a description of the perpetrator's clothing. When Mr. Cotton returned from having x-rays taken, another officer joined Officer Gerard and Mr. Cotton again answered the questions. Mr. Cotton became upset with the repeated questioning and called Officer Gerard a "red-headed b----." Mr. Cotton testified that in response, Officer Gerard "flipped me off," meaning she raised her middle finger to him.

According to Mr. Cotton, he answered all the questions asked of him. He provided information about where the crime occurred and gave a description of the perpetrator. He denied being aware of any attempt by a law enforcement officer to contact him once he left the hospital.

Mr. Cotton had difficulty recovering his vehicle after it was impounded by the police as evidence. Mr. Cotton was upset by Officer Gerard's treatment of him, believing that she treated him as a suspect and not as a victim. Mr. Cotton testified that he filed a lawsuit against Officer Gerard.

According to the police report, Mr. Cotton initially told Officer Gerard what happened, but became uncooperative when the officer asked him why he did not call the police from his former girlfriend's home. This was right before the nurse took Mr. Cotton to have x-rays taken. According to the police report, when Mr. Cotton returned from the x-rays, he was agitated and told the officer that

1 the perpetrator tried to steal the car. When the officer asked about the car-jacking, Mr. Cotton said he
2 had nothing else to say and directed profanity at her. The police report indicates that Mr. Cotton
3 “flipped off” the officer.

4 A supplemental police report was filed in October 2000, by a detective following up on
5 Officer Gerard’s report. It indicated that the detective attempted to contact Mr. Cotton without
6 success. It also stated that the detective investigated whether Mr. Cotton was a suspect in other crimes
7 in the area, with negative results. The report stated that the case would remain in inactive status
8 because of lack of evidence, Mr. Cotton’s inability to identify the suspect, and his apparent lack of
9 cooperation.

10 There is documentation in the file that program staff attempted to contact Officer Gerard
11 four times over a period of two weeks, leaving detailed voicemail messages. Officer Gerard did not
12 respond.

13 The hearing officer provided Mr. Cotton additional time to obtain statements from witnesses
14 who could corroborate his testimony, including a friend who was present at the hospital and the nurse
15 who treated him. However, Mr. Cotton did not submit any additional statements.

16 **Determination of Issues**

17 Government Code section 13964(a) provides that the Board shall approve an application for
18 assistance if a preponderance of the evidence shows that as a direct result of a crime the victim
19 incurred an injury that resulted in a pecuniary loss. Written reports from a law enforcement agency
20 responsible for investigating the qualifying crime may be relied upon. (Cal. Code Regs., tit. 2,
21 § 647.31.)¹ The applicant has the burden of proving all issues necessary to establish eligibility by a
22 preponderance of evidence. (Reg. § 647.32.) There is sufficient evidence that Mr. Cotton was shot
23 and was the victim of a qualifying crime.

24 A victim is not eligible for program assistance if the victim failed to reasonably cooperate
25 with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.
26 (Gov. Code, § 13964(c)(2).) Completely and truthfully responding to request for information in a
27 timely manner is one element of cooperating with law enforcement. (Reg. § 657.1(e)(2).) A victim’s

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29 ¹ All regulation citations are to California Code of Regulations, title 2.

1 physical condition may be considered when assessing whether a victim reasonably cooperated with law
2 enforcement. (Reg. § 657.1(j)(2).) The Program has the burden of proving all issues necessary to
3 disqualify an applicant for failing to reasonably cooperate with law enforcement. (Reg. § 647.32(b).)

4 Mr. Cotton's testimony, appeared to be truthful. He admitted making a vulgar comment to
5 the investigating officer at the hospital. He became upset and somewhat agitated when describing
6 Officer Gerard's continued questioning of him. Although his apparent hostility toward Officer Gerard
7 could indicate animus, it may also be reasonable in light of his belief that he responded to the
8 questions even though he was in pain and wished to receive medical attention.

9 This is a close case. It is undisputed that Mr. Cotton became upset with Officer Gerard's
10 repeated questioning of him in the emergency room. However, he responded to her questions about
11 the crime and provided a description of the suspect. It is deeply troubling that Officer Gerard failed to
12 respond to staff's repeated contacts. Considering all of the evidence, there is insufficient evidence that
13 Mr. Cotton failed to reasonably cooperate with law enforcement.

14 **Order**

15 The application is allowed and any verified, covered pecuniary losses should be reimbursed.

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18 Date: July 5, 2001

JUDITH A. KOPEC
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Hearing Officer
Victim Compensation and Government
Claims Board

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Precedent Decision No. 01 – 04

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13 On August 10, 2001, the Victim Compensation and Government Claims Board adopted the
14 attached Decision as a Precedent Decision. The Decision became effective on August 10, 2001.
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16 Date: August 14, 2001

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18 CATHERINE CLOSE
19 Chief Counsel
20 Victim Compensation and Government Claims Board
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